

ITEM NO.2

COURT NO.8

SECTION X

S U P R E M E C O U R T O F
R E C O R D O F P R O C E E D I N G S

I N D I A

Writ Petition(Criminal) No. 63/2013

NAND KISHORE

Petitioner(s)

VERSUS

STATE OF M.P.
(With office report)

Respondent(s)

[FOR FINAL DISPOSAL]

Date : 16/12/2014 This petition was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE FAKKIR MOHAMED IBRAHIM KALIFULLA
HON'BLE MR. JUSTICE ABHAY MANOHAR SAPRE

For Petitioner(s)

Mr. Rishi Malhotra, A.O.R.

For Respondent(s)

Mr. C. D. Singh, A.O.R.

UPON hearing counsel the Court made the following
O R D E R

The writ petition is allowed for the reasons
stated in the signed reportable order.

Since the petitioner was already enlarged on
bail by this Court on 15th July, 2013, no further
orders are necessary as regards his detention any
more. Bail Bond and Sureties, if any, shall stand
discharged.

Signature Not Verified

[KALYANI GUPTA]

[SHARDA KAPOOR]

Digitally signed by

Kalyani Gupta

Date: 2014.12.20

12:35:28 IST

Reason:

COURT MASTER

COURT MASTER

[SIGNED REPORTABLE ORDER IS PLACED ON THE FILE.]

WRIT PETITION (CRL.) NO. 63 OF 2013

REPORTABLE

IN THE SUPREME COURT OF INDIA
CRIMINAL ORIGINAL JURISDICTION

WRIT PETITION (CRIMINAL)

No. 63 OF 2013

NAND KISHORE

.....

PETITIONER

VERSUS

STATE OF M.P.

.....

RESPONDENT

O R D E R

This writ petition was filed by the petitioner claiming the benefit of the provision under the Juvenile Justice (Care and Protection of Children) Act, 2000

(hereinafter called, 'the Act'). The petitioner claimed that he was born on 14th April, 1980 and that the incident occurred on 18th June, 1997. He, therefore,

claimed that since he was 17 years 2 months and 4 days old on the date of commission of offence, though his conviction under Section 302 by the trial Court was affirmed by the High Court as well as by this Court by order dated 7th July, 2011, by virtue of Section 7A of the Act, he was entitled for the benefit of the provisions contained in the Act.

2. On 22nd April, 2013, this Court issued notice in this writ petition. On 15th July, 2013, while enlarging the

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petitioner on bail, a Report was called for from the Juvenile Justice Board, Datia, Madhya Pradesh.

3. A perusal of the said Report discloses that the District Education Officer and Assistant Teacher of Pandit Nehru Primary School, Kasba-Banmore, District Morena, were examined apart from production of original mark sheets of Class 2nd, 3rd, 7th, 9th, and 11th standards. Based on the analysis of the above oral and

documentary evidence, it was found that the petitioner

was really born on 14th April, 1980.

It is, therefore,

reported that on the date of occurrence i.e. on 18th June, 1997 the petitioner was 17 years, 2 months and 4 days old.

4. In the light of the said fact now reported it is beyond doubt that the petitioner was a juvenile as on the date of occurrence. Since, it has now turned out that the petitioner was a juvenile on the date of occurrence his incarceration henceforth cannot be continued.

5. A question arose as to when conviction came to be imposed on an accused, prior to the coming into force of the Act of 2000, and a claim as to his status as a juvenile at the subsequent stages as to whether the protection or the benefits can be made available to him

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as a juvenile by virtue of the coming into force of the Act of 2000. In the decision reported in Hariram v. State of Rajasthan (2009) 13 SCC 193, it was ultimately held:-

".....a juvenile who had not completed eighteen years on the date of commission of the offence was also entitled to the benefits of the Juvenile Justice Act, 2000, as if the provisions of Section 2(k) had always been in existence even during the operation of the 1986 Act."

6. The said judgment was subsequently followed in the decisions reported in Ajay Kumar v. State of Madhya Pradesh (2010) 15 SCC 83, Abuzar Hussain @ Gu Hossain v. State of West Bengal (2012) 10 SCC 489, Jitendra Singh alias Babboo Singh and another v. State of Uttar Pradesh(2013) 11 SCC 193 and Yakub Abdul Razak

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us, Hon'ble Mr. Justice Fakkir Mohamed Ibra

him

Kalifulla, in the judgment reported in JT (2014) 9 SC

243 titled Hakkim v. State represented through Deputy

Superintendent of Police had occasion to follow

the

above said principle while dealing with a convict in

Criminal Appeal No. 1410 of 2009(one of the t

hree

appeals). Therefore, after the coming into force of the

Act of 2000, a juvenile who had not completed 18 years

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of age on the date of the commission of the offence was entitled to the benefits of the said Act. Following the aforesaid principle followed in Hakkim's case (supra), the same benefit is granted to the petitioner herein as well.

7. It is also not in dispute that the petitioner has already undergone 11 years of imprisonment, pursuant to the conviction and sentence imposed on him. The writ petition, therefore, stands allowed and the petitioner shall be set at liberty forthwith unless his detention is warranted in any other case.

8. Since the petitioner was already enlarged on bail by this Court on 15th July, 2013, no further orders are necessary as regards his detention any more. Bail Bond and Sureties, if any, shall stand discharged.

.....J.
[FAKKIR MOHAMED IBRAHIM KALIFULLA]

.....J.
[ABHAY MANOHAR SAPRE]

